

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James A. Butler,

Civil No. 10-16 (PAM/JJG)

Plaintiff,

v.

ORDER

Warden Duke Terrell,
Bureau of Prison, Mail Room,
Clerk of Court, 4th Circuit, and
U.S. Postal Master,

Defendants.

This matter is before the Court on Plaintiff's Motion to Alter Judgment. Plaintiff takes issue with this Court's refusal to appoint counsel in this pro se civil rights action, and contends that Rule 59 or Rule 60 require the Court to set aside its previous order declining to appoint counsel. Rule 59 provides a procedure for altering or amending judgments; there has been no judgment entered in this case and thus Rule 59 does not apply. Rule 60 provides for relief from a final judgment or order for circumstances such as mistake, newly discovered evidence, or fraud. Fed. R. Civ. P. 60(b). Plaintiff apparently believes that the Court was mistaken in refusing to appoint counsel in this case.

Magistrate Judge Graham's Report and Recommendation ("R&R") recommends the summary dismissal of Plaintiff's allegations for failure to state a claim. In the R&R, Magistrate Judge Graham thoroughly explains why Plaintiff's claims have no merit. The appointment of counsel will not render Plaintiff's claims meritorious. He simply does not have any legal claim based on the facts presented in his Complaint.

As stated previously, the Court is sympathetic to Plaintiff's health issues. However, Plaintiff's claims are without merit and do not warrant the appointment of counsel.

In its previous Order, the Court allowed Plaintiff additional time to file objections to the R&R. Rather than filing objections, Plaintiff chose to file a motion for the appointment of counsel, despite the Court's statement that it would not appoint counsel in this matter. Having failed to object to the R&R in the time period permitted, Plaintiff has waived any objection.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion to Alter Judgment (Docket No. 8) is **DENIED**;
2. The Report and Recommendation (Docket No. 5) is **ADOPTED**;
3. Plaintiff's application to proceed in forma pauperis (Docket No. 2) is **DENIED**;
4. This action is summarily **DISMISSED** pursuant to 28 U.S.C. § 1915A(b); and
5. Plaintiff is required to pay the unpaid balance of the Court filing fee, namely the full \$350, in accordance with 28 U.S.C. § 1915(b)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 17, 2010

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge